

THE HONORABLE THOMAS S. ZILLY

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

CHRIS YOUNG YOO,

Defendant.

Case No. CR17-00075 TSZ

DEFENDANT'S SENTENCING  
MEMORANDUM

COMES NOW, the defendant, Chris Young Yoo, by and through his counsel, Michelle Peterson and Kerry Swendt, and submits this sentencing memorandum.

**I. INTRODUCTION**

On March 20, 2017, Mr. Yoo entered pleas of guilty to the Information, which charged a violation of Wire Fraud in violation of Title 18, United States Code, Section 1343, and False Statement to the United States in violation of Title 18, United States Code, Section 1001. The defense, government and U.S. Probation recommend a sentence of 80 months. Mr. Yoo is deeply remorseful for the emotional and financial harm he has brought to his victims. He has cooperated fully and accepts full responsibility for his conduct. For these reasons, the defense respectfully requests this Court accept the joint recommendation of 80 months.

## II. DISCUSSION

### A. § 3553 Sentencing Factors

The United States Supreme Court has held that the sentencing guidelines are not mandatory but only advisory and are one factor, among many, to be considered when imposing a sentence. *United States v. Booker*, 543 U.S. 220, 245, 259-260 (2005); *Gall v. United States*, 128 S. Ct. 586, 594-97 (2007); *Kimbrough v. United States*, 128 S. Ct. 558, 564 (2007). The Court shall impose a sentence sufficient, but not greater than necessary, while taking into consideration the following factors: 1) the nature and circumstances of the offense; 2) the history and characteristics of the defendant; 3) the need for the sentence imposed to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense; 4) the need for the sentence to afford adequate deterrence to criminal conduct; 5) the need for the sentence to protect the public from further crimes of the defendant; (6) the need to provide the defendant with educational or vocational training, medical care, or other correctional treatment; 7) the types of sentences available; 8) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and 9) the need to provide restitution to any victims of the offense. 18 U.S.C. § 3553(a).

#### 1. Mr. Yoo's Background

An 80 month sentence is supported by Mr. Yoo's history and characteristics. Mr. Yoo comes from a broken family and experienced hardships at a young age. Mr. Yoo was born in Korea, and moved to Guam with his family. His father was a violent man. His parents had different views on finances which caused tension in their marriage. Mr. Yoo's father was severely frugal and his mother aspired to live a more expensive, lavish lifestyle. Eventually, his mother moved the family to United States, leaving behind her husband. Mr. Yoo's mother

1 desired a lifestyle that her husband and her financial situation could not support. She only  
2 informed Mr. Yoo's father of her intent to divorce him after she had moved the family to the  
3 United States. His father returned to Korea and Mr. Yoo has had no relationship with him since  
4 age eleven.

5  
6 Despite Mr. Yoo's mother's desire for a more lavish lifestyle, it turned out that Mr.  
7 Yoo's family suffered even greater financial hardship after his parents' divorce. When Mr. Yoo  
8 was in high school, he lived in a one-bedroom apartment with his mother who worked two to  
9 three jobs to support the family. During this time, one of Mr. Yoo's older sisters tragically died  
10 in a car accident while driving home from college over the Christmas holiday. She had agreed  
11 to share a ride home with another student and it is believed that he fell asleep at the wheel  
12 killing them both. Mr. Yoo, only fifteen years old at the time, was forced to translate the news  
13 of his sister's death to his mother, who did not speak English.

14  
15 Mr. Yoo's mother eventually stopped coming home, leaving Mr. Yoo largely without  
16 parental support or supervision. His mother remarried and sent Mr. Yoo away to school. After  
17 graduation, Mr. Yoo attended various colleges intermittently, often having to take time off to  
18 financially support himself. Mr. Yoo ultimately dropped out of school.

19  
20 After dropping out, Mr. Yoo worked as a store clerk during the graveyard shift at a local  
21 gas station and convenience store. During his employment, Mr. Yoo came to know a customer  
22 who frequented the store. The customer wore an expensive pinstripe suit and drove a Ferrari.  
23 Every morning, he purchased coffee and The Wall Street Journal. Mr. Yoo was impressed by  
24 this man, viewing him as a symbol of success. Mr. Yoo eventually worked up the courage to  
25 ask the man what he did for a living. The man told Mr. Yoo that he was a stockbroker and gave  
26 Mr. Yoo his business card and encouraged him to apply to his company.  
27

1 This opportunity had a profound effect on Mr. Yoo, who was alone and struggled to  
 2 make ends meet. Mr. Yoo was raised by his mother who defined wealth as success and always  
 3 wanted for more, but lived in both financial and emotional poverty. He lacked familial support,  
 4 having no relationship with his father and a period of estrangement from his mother for 13  
 5 years. Mr. Yoo saw a career as a broker as his path to success.

6  
 7 Mr. Yoo worked at different brokerage firms and carved out a successful career. He  
 8 married and had three children. Despite Mr. Yoo's success and modest income, he felt the need  
 9 to become more successful to provide for his family. Despite his limited time as a broker and  
 10 lack of management experience, Mr. Yoo opened an investment firm called Summit Asset  
 11 Strategies, LLC ("SAS"). Additionally, he opened two related companies, Summit Asset  
 12 Strategies Investment Management ("SASIM") and Summit Asset Strategies Wealth  
 13 Management ("SASWM").  
 14

## 15 **2. The Offense**

16 SAS opened in 2006, just before the economic crisis. Mr. Yoo realized the business  
 17 lacked sufficient funds to be sustainable. He naively thought that he would be able to find  
 18 investments and investors in Korea and that they would be eager to invest with him. He soon  
 19 learned that the Korean investors were cautious and wanted to see a track record of successful  
 20 investments before they would agree to invest with Mr. Yoo. In a desperate effort to keep his  
 21 business open, Mr. Yoo wrongfully began diverting investors' money into a separate account to  
 22 fund SAS business operating expenses as well as his personal expenses, instead of investing the  
 23 funds as he told the investors he would. Mr. Yoo believed it was only for a short period of time  
 24 and that once his firm was up and running he would be able to fully pay back every victim.  
 25

26 SAS had some early success and Mr. Yoo believed that the business would be able to  
 27

1 sustain itself. Then just a year after opening his business, the economy took a dramatic  
2 downturn, seriously impacting SAS' investments in real estate, and several investments failed  
3 due to unforeseen causes. These events drove SAS further into financial hardship. Instead of  
4 concentrating on repaying investors, Mr. Yoo continued diverting funds from them to keep his  
5 business going, truly believing the next investment would earn enough to pay back all victims  
6 as well as fully fund SAS. While misguided, Mr. Yoo never intended to permanently deprive  
7 his victims of their investments.  
8

9 In September 2015, the SEC filed a complaint against Mr. Yoo. In November 2015, the  
10 Court entered a consent judgment enjoining Mr. Yoo from acts of securities fraud. Mr. Yoo,  
11 desperate to keep his company afloat, solicited funds from victims, offering to invest the money  
12 and instead diverted the money.  
13

14 Mr. Yoo diverted victims' funds in an effort to make SAS a successful investment  
15 advisory firm. Mr. Yoo believed that if he could make SAS successful, he could earn enough  
16 money to repay every victim. As SAS did not provide a steady income, Mr. Yoo also used  
17 victim funds for personal expenses. However, he did not seek a grandiose lifestyle, and  
18 contributed what he could to SAS. In 2014, Mr. Yoo sold his home and put the sale proceeds  
19 into SAS to "true up" at the end of the year, as SAS financial status did not meet its expected  
20 value.  
21

### 22 **3. Post Offense Conduct**

23 Mr. Yoo is truly remorseful for his actions. His conduct is aberrant to his otherwise law-  
24 abiding life. He has spent his time since pleading guilty reflecting on the severity of his crime  
25 and the impact it has had on his victims. In his letter accepting responsibility, Mr. Yoo wrote,  
26 in part:  
27

1 My crime have caused so much pain and suffering to the victims and my  
2 family. I know the victims' lives are forever changed. I know they are  
3 dealing with extreme financial hardships because of the losses. I am very  
4 sorry for everything I did... I truly am sorry for what I had done to them.  
5 I know it is impossible for the victims to forgive me but I want to let them  
6 know that I am sorry for betraying them, defrauding them. The friendships  
7 and trusts they gave me, I failed them. I am very sorry... please forgive  
8 me. I will accept the punishment of US government and I will also do what  
9 I can for the rest of my life – to make restitutions to all victims, apologizing  
10 and asking for their mercy.

11 *See Exhibit F.*

12 Mr. Yoo's remorse and acceptance of his actions are demonstrated through attached  
13 letters of support. See Exhibit A-E. His Licensed Mental Health Counselor wrote:

14 Chris has openly and honestly accepted full responsibility for his fraudulent  
15 actions. He has been diligent in identifying the events and decisions made  
16 which led to his current situation. Chris has been reflective, thoughtful and  
17 fully engaged in processing the impact his actions have had on his victims.  
18 Chris has expressed an understanding that being incarcerated is a  
19 consequence for his crime.

20 *See Exhibit A.*

21 In addition to cooperating with the government and accepting responsibility for his  
22 actions, Mr. Yoo also cooperated with United States Probation, as demonstrated by the  
23 presentence report: "He [Mr. Yoo] entered a timely plea of guilty, and was entirely candid and  
24 cooperative during his meetings with the probation officer during the presentence process."

25 PSR ¶ 21.

26 Mr. Yoo recognizes the pain and suffering this has inflicted on others. In addition to his  
27 victims, Mr. Yoo has caused a lifetime of pain and suffering for his wife and three young  
children who must live not only with the knowledge that their father was a fraudster but who  
also left them in a dire financial situation. Mr. Yoo accepts responsibility for his family,  
recognizing the breadth his actions have had on the people around him:

Just like the victims, my family deals with extreme financial hardship. But I know that my own sufferings are no comparisons to the mental, emotional, physical suffering the victims are experiencing. I know now that my family is also victims of my crimes.

See Exhibit F.

#### 4. Cooperation

In 2014, Mr. Yoo was under SEC investigation, however, no law enforcement investigation had commenced. Mr. Yoo approached the United States Attorney's office and disclosed his criminal conduct, with the intention of fully cooperating. Since that time, Mr. Yoo has cooperated with the government through every stage of prosecution. Without any immunity or promise of any leniency, Mr. Yoo voluntarily met with federal investigating agents and the Assistant United States Attorney over a period of almost two days. He thoroughly discussed the Ponzi scheme and its distinction from his legitimate businesses. Mr. Yoo's businesses were complex and included offices in the United States and Korea. In order to help the government, Mr. Yoo provided financial statements related to the Ponzi scheme and arranged for business records in Korea to be produced to the United States Attorney's Office. Mr. Yoo did so without any protection for his statements or documents.

#### 5. Comparative Cases

Several relevant cases from this district give context to sentences imposed for similarly-situated defendants for investment related fraud.

Case Name and Number	<i>U.S. v. Charles Chesterfield</i> , CR12-145-TSZ	<i>U.S. v. Richard A. Finger</i> , CR11-382-RSM	<i>U.S. v. Rhonda Breard</i> , CR10-81-MJP	<i>U.S. v. Chris Yoo</i> , CR17-00075-TSZ
Loss Amount	\$3.1 million	\$7 million	\$11 million	\$3.6 million
Length of scheme	18 months	2 years	10 years	9 years

Initial Intent	Striving to keep company running	Unable to determine from sentencing memorandum	Permanently deprive investors of money	Striving to keep company running
Goal of repaying victims	Intent to fully repay all victims	Unable to determine from sentencing memorandum	No intent to repay victims	Intent to fully repay all victims
Cooperation	Fully cooperated	Fully cooperated	Fully cooperated	Approached government about crime and fully cooperated
Guidelines Range	63-78 months	78-97 months	97-121 months	97-121 months
Sentence imposed	40 months	54 months	80 months	

While no two cases or defendants are identical, these cases demonstrate sentences below the guideline range are appropriate when certain factors are present. Mr. Yoo not only cooperated with the government, but alerted them to his conduct before a federal investigation had begun. The motivation for his crime was to save his business and he intended to repay his victims at all times, as unrealistic as that may have been. While there are differences between Mr. Yoo's case and the cases listed above, there are a number of similar mitigating factors. A sentence of 80 months would avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct, as considered by 18 U.S.C. § 3553(a).

## **B. SENTENCING RECOMMENDATION**

The parties agree the 2014 edition of the Sentencing Commission Guideline Manual should apply. Although USSG §1B1.11 directs the Court to apply the Guideline Manual in



effect on the date of sentencing, it allows for an exception if the use of that edition would violate the *ex post facto* clause of the United States Constitution by providing a sufficient risk of increasing the measure of punishment attached to the covered crimes.” USSG §1B1.11; *United States v. Waters*, 771 F.3d 679, 680 (9th Cir. 2014) (quoting *Peugh v. United States*, — U.S. —, 133 S.Ct. 2072, 2082 (2013)). Instead, the Court should apply the manual in effect on the date that the offense was committed. USSG §1B1.11(b)(1). The calculations under the 2017 manual includes a “substantial hardship” enhancement that is absent from the 2014 Guideline Manual, which causes Mr. Yoo’s sentencing range to be higher than it would under the manual in place when the offense was committed.

Because the application of the 2017 Guideline Manual would violate the *ex post facto* clause, the Court “shall use the Guidelines Manual in effect on the date that the offense of conviction was committed.” USSG §1B1.11(b)(1). For convictions of wire fraud, each use of the wires constitutes an independent offense. *United States v. Pace*, 314 F.3d 344, 350 (9th Cir. 2002). Although Mr. Yoo’s conduct continued into November 2015, the offense of wire fraud was transmitted and completed on April 16, 2015. Information ¶ 11. Therefore, the 2014 Guideline Manual should be applied.

The parties agree the 2014 Sentencing Guideline calculation pursuant to § 2B1.1 is as follows:

Base Offense Level:	+7	(§ 2B1.1(a)(1))
Specific Offense Characteristics		
Loss: \$3,660,216	+18	(§ 2B1.1(b)(1)(J))
10+ Victims	+2	(§ 2B1.1(b)(2)(A))
Violation of prior specific judicial order	+2	(§ 2B1.1(b)(9))

1 Violation of securities law +4 (§ 2B1.1(b)(19))

2 Adjustments

3 Acceptance of Responsibility -3

4  
5  
6 Total Offense Level 30

7 Given that Mr. Yoo has no criminal history, his Criminal Category is I, thereby resulting in a  
8 corresponding Guideline range of 97 to 121 months.

9 **C. BUREAU OF PRISONS DESIGNATION**

10 The defense respectfully requests that the Court recommend Mr. Yoo be designated to  
11 FCI Sheridan. Mr. Yoo's family resides in Bellevue, WA. A designation to FCI Sheridan would  
12 enable Mr. Yoo's family to visit him during his lengthy incarceration. Mr. Yoo has three young  
13 children who would benefit from this proximity. Further, in light of the fact Mr. Yoo has known  
14 about this case since 2014, approached the government about his conduct, and remained in the  
15 area to cooperate with the government throughout the course of the investigation, the defense  
16 requests that Mr. Yoo be permitted to self-surrender on a designated date to the facility  
17 determined by the Bureau of Prisons.

18  
19 **D. CONCLUSION**

20 Mr. Yoo committed a very serious crime, however, his motivation was not grandiosity  
21 or a desire to steal from his victims, but rather to make his business successful. Mr. Yoo  
22 recognizes the pain and suffering of his victims and accepts he will be punished. A sentence of  
23 80 months, as recommended by the defense, the government, and United States Probation, is a  
24 substantial amount of imprisonment which is sufficient but not greater than necessary to both  
25 punish Mr. Yoo and deter any future criminal conduct.  
26  
27

1 DATED this 10th day of August, 2017.

2  
3 Michelle Peterson Law, PLLC

4 /s/ Michelle Peterson  
Michelle Peterson, WSBA No. 33598

5  
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Attorneys for Defendant

**CERTIFICATE OF SERVICE**

I hereby certify that on August 10, 2017, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all counsel of record.

Dated this 10th day of August, 2017.

/s/ Kerry Swendt

Kerry Swendt, WSBA No. 49922